STATE OF MICHIGAN

COURT OF APPEALS

NEW MICHIGAN, L.P., Petitioner-Appellant,	UNPUBLISHED February 10, 2011
v	No. 294174 Michigan Tax Tribunal
CITY OF ROOSEVELT PARK, Respondent-Appellee.	LC No. 00-326489

Before: MURPHY, C.J., and WHITBECK and MURRAY, JJ.

PER CURIAM.

Petitioner New Michigan, L.P., appeals as of right from the opinion and judgment of the Michigan Tax Tribunal determining the true cash values, state equalized values, and taxable values of petitioner's real property in the city of Roosevelt Park for tax years 2006 and 2007. We affirm.

I. FACTS

In 1994, petitioner, a limited partnership, purchased a 244-unit apartment complex known as Lakecrest Park Apartments in respondent Roosevelt Park and a separate 58-unit apartment building commonly known as Lakecrest Shores Apartments in the nearby city of Norton Shores. The two properties are located approximately one mile from each other. The properties are jointly managed by a management company, Metropolitan Properties of America (MPA), which is owned by one of petitioner's partners, and which manages other properties in six different states. Vacant apartment units at Lakecrest Park were used as leasing and maintenance offices, and as a model apartment unit, for both properties. Tenants at Lakecrest Shores were permitted to use a swimming pool at Lakecrest Park.

In 2006, petitioner filed a petition with the Michigan Tax Tribunal, seeking a reduction of the state equalized value, assessed value, and taxable value of the Lakecrest Park property for tax year 2006. A challenge to the 2007 values was later added.[1] Petitioner's appraisal expert, Susan

[1] Petitioner filed a similar petition challenging the assessed values for the Lakecrest Shores property, and has challenged the Tax Tribunal's decision in that case in a separate appeal in

Shipman, proposed that the Lakecrest Park and Lakecrest Shores properties be valued together as a single economic unit, using both income-capitalization and sales-comparison approaches to determine value, and that the final value determination then be allocated between the two properties. In a detailed opinion, the Tax Tribunal rejected Shipman's unitary approach to determining value. After finding petitioner's appraisal lacking in reliability and credibility, and finding that petitioner failed to provide evidence to demonstrate inaccuracies in respondent Roosevelt Park's cost approach to determining value based on property tax records, the Tax Tribunal adopted respondent's proposed values for each tax year.

II. ANALYSIS

On appeal, petitioner challenges the Tax Tribunal's rejection of its unitary approach to determining value. Specifically, petitioner argues that the Tax Tribunal erred by rejecting its appraiser's methodology merely because the properties were located in separate taxing jurisdictions. After reviewing the Tax Tribunal's opinion, we conclude otherwise.

A. STANDARD OF REVIEW

Our review of the Tax Tribunal's decision is limited by Const 1963, art 6, § 28, which provides that, "[i]n the absence of fraud, error of law or the adoption of wrong principles, no appeal may be taken to any court from any final agency provided for the administration of property tax laws from any decision relating to valuation or allocation." Under this provision, we are bound by the Tax Tribunal's factual determinations and may properly consider only questions of law. *Great Lakes Div of Nat'l Steel Corp v City of Ecorse,* 227 Mich App 379, 388; 576 NW2d 667 (1998). Questions of law, including the proper interpretation and application of a statute, are reviewed de novo. *Paris Meadows, LLC v City of Kentwood,* 287 Mich App 136, 141; 783 NW2d 133 (2010).

When reviewing the Tax Tribunal's decision under the appropriate standard of review noted above, this Court will not assess witness credibility, *Great Lakes Div of Nat'l Steel Corp,* 227 Mich App at 407, and the weight given to evidence is within the Tax Tribunal's discretion. *Teledyne Continental Motors, Inc v Muskegon Twp,* 163 Mich App 188, 191; 413 NW2d 700 (1987). While those fact-based decisions are essentially review-proof, questions of law are handled differently. The Tax Tribunal commits an error of law where its decision is not supported by competent, material, and substantial evidence on the whole record, *Great Lakes Div of Nat'l Steel Corp,* 227 Mich App at 388, or when its decision is contrary to a statute or binding precedent. "Substantial evidence must be more than a scintilla of the evidence, although it may be substantially less than a preponderance of the evidence." *Id.* at 388-389.

Petitioner had the burden of establishing the true cash value of the property. MCL 205.737(3); *Teledyne Continental Motors,* 163 Mich App at 191. The burden of proof encompasses two concepts: "(1) the burden of persuasion, which does not shift during the course of the hearing; and (2) the burden of going forward with the evidence, which may shift to the

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Docket No. 294678. The two appeals have been submitted together for a decision from the same panel of this Court.

opposing party." *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 354-355; 483 NW2d 416 (1992). At the same time, because Tax Tribunal proceedings are de novo in nature, the Tax Tribunal has a duty to make an independent determination of true cash value. *Great Lakes Div of Nat'l Steel Corp*, 227 Mich App at 409. Under this standard, the pertinent question is whether petitioner has proven, by the greater weight of the evidence, that the challenged assessment is too high based on the Tax Tribunal's findings of true cash value. *Id.* at 409-410. "The Tax Tribunal's overall duty is to determine the most accurate valuation under the individual circumstances of the case." *Id.* at 399.

B. PROPERTY TAX LAWS

The General Property Tax Act, MCL 211.1 *et seq.*, defines "true cash value," in pertinent part, as "the usual selling price at the place where the property to which the term is applied is at the time of assessment." MCL 211.27(1). The concept of "true cash value" is synonymous with fair market value. *Meadowlanes Ltd Dividend Housing Ass'n v City of Holland*, 437 Mich 473, 484 n 17; 473 NW2d 636 (1991). A concept fundamental to the determination of true cash value is the highest and best use of the property. *Edward Rose Bldg Co v Independence Twp*, 436 Mich 620, 633; 462 NW2d 325 (1990). This concept recognizes that "the use to which a prospective buyer would put the property will influence the price which the buyer would be willing to pay." *Id*. "[T]he statutory definition of true cash value—'the usual selling price'—requires that actual facts be a significant consideration in the valuation of property." *Id*. at 638. Unduly speculative scenarios are not permitted. *Huron Ridge, LP v Ypsilanti Twp*, 275 Mich App 23, 34-35; 737 NW2d 187 (2007). In the context of a condemnation proceeding, the highest and best use has been described as a use that is "legally permissible, financially feasible, maximally productive, and physically possible." *Detroit v Detroit Plaza Ltd Partnership*, 273 Mich App 260, 285; 730 NW2d 523 (2006).

In *Great Lakes Div of Nat'l Steel Corp*, 227 Mich App at 390, this Court explained the three methodologies usually utilized in determining true cash value:

> The three most common approaches for determining true cash value are the capitalization-of-income approach, the sales-comparison or market approach, and the cost-less-depreciation approach. [*Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 353; 483 NW2d 416 (1992).] However, variations of these approaches and entirely new methods may be useful if found to be accurate and reasonably related to fair market value. [*Meadowlanes Ltd Dividend Housing Ass'n*, 437 Mich at 485]. Regardless of which approach is used, the value determined by the Tax Tribunal must be the usual price for which the property would sell. *Id*.; *Samonek v Norvell Twp*, 208 Mich App 80, 84; 527 NW2d 24 (1994); *Jones & Laughlin Steel Corp, supra* at 353; see also MCL 211.27; MSA 7.27. The task of approving or disapproving specific valuation methods or approaches has fallen to the courts because the Legislature did not

direct that specific methods be used. *Meadowlanes Ltd. Dividend Housing Ass'n, supra* at 484; 473 NW2d 636.[2]

We first address whether the two non-contiguous apartment complexes should be considered as one unit for assessment purposes. In doing so, we hold that the record contains competent, material, and substantial evidence to support the Tax Tribunal's determination that the highest and best use of the Lakecrest Park property was as the existing 244-unit apartment complex. Indeed, the tribunal's refusal to value it jointly with the Lakecrest Shores property is supported by the general rule that "different parcels of land in the same ownership are to be regarded as separate units for tax purposes and, as such, must be separately valued and assessed." *Edward Rose Bldg Co,* 436 Mich at 633.

We recognize that there are circumstances where an assemblage doctrine may be applied to determine the highest and best use of property. See *Detroit/Wayne Co Stadium Auth v Drinkwater, Taylor & Merrill, Inc,* 267 Mich App 625, 634-639; 705 NW2d 549 (2005), which considered the doctrine in the context of a case involving an evaluation of prospective uses for condemned property. Assemblage is concerned with "the use of a parcel of property in conjunction with other properties." *Id.* at 634. And, as petitioner observes, under certain scenarios noncontiguous properties located in separate taxing jurisdictions may be valued together as an integrated unit, even without statutory authorization for a unitary valuation, to determine the usual selling price of property. See *Great Lakes Div of Nat'l Steel,* 227 Mich App at 411-413.

But, unlike the integrated steel mill situated on the properties in *Great Lakes Div of Nat'l Steel Corp,* the Tax Tribunal in this case found that the two properties could function and be sold separately. There is competent, material, and substantial evidence to support this finding, particularly with respect to the Lakecrest Park property, which clearly functions independent of the Lakecrest Shores property. Although petitioner presented testimony that some unquantified economies of scale are available by operating the Lakecrest Park property jointly with the Lakecrest Shores property, petitioner's appraiser conceded in her valuation disclosure that either

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[2] Under a traditional income-capitalization approach, the present value of future benefits of property ownership is measured by "estimating the property's income stream and its resale value (reversionary interests) and then developing a capitalization rate which is used to convert the estimated future benefits into a present lump-sum value." *Meadowlanes Ltd Dividend Housing Ass'n,* 437 Mich at 485 n 20. Under the sales-comparison approach, true cash value is determined "by analyzing recent sales of similar properties, comparing them with the subject property, and adjusting the sales price of the comparable properties to reflect differences between the two properties." *Id.* at 485 n 19. It is the only approach that directly reflects the balance of supply and demand in the marketplace. *Great Lakes Div of Nat'l Steel Corp,* 227 Mich App at 391. But the determination of true cash value will often involve a reconciliation of various different approaches. *Id.* at 398.

property could be sold separately. The fact that a sale might trigger the need to establish new onsite or offsite leasing operations for the Lakecrest Shores property, or to address the existing access by Lakecrest Shores tenants to the swimming pool at Lakecrest Park, does not establish that the properties are incapable of functioning separately.

In addition, while this Court in *Wayne Co v Michigan State Tax Comm*, 261 Mich App 174, 238-244; 682 NW2d 100 (2004), upheld a "unit" valuation or appraisal method to value personal property of utilities, the case at bar does not involve an integrated group of assets, but rather entails two parcels of property that can function and be sold separately. Therefore, the Tax Tribunal did not commit an error of law or adopt a wrong principle by failing to employ the "unit" valuation approach approved in *Wayne Co*.

The evidence in this case supports the Tax Tribunal's determination that petitioner made a business decision to combine financial information for the Lakecrest Park and Lakecrest Shores properties. In addition, the Tax Tribunal reasonably concluded that the shared ownership and economies of scale claimed by petitioner could be applied to any number of properties owned by petitioner. Regardless, any improved economies of scale from combining business operations would have to be evaluated in light of the lower unit price that, according to Shipman's testimony, tends to accompany larger apartment complexes when they are sold. Considering the evidence as a whole and the authority considered by the Tax Tribunal in reaching its decision, the Tax Tribunal did not commit an error of law or adopt a wrong principle in finding that the highest and best use of the Lakecrest Park property was as a 244-unit apartment complex.[3]

We also reject petitioner's argument that the Tax Tribunal failed to consider the "existing use" and "present economic income of structures" factors in MCL 211.27(1) for determining true cash value. The fact that the Tax Tribunal rejected Shipman's methodology and reached a different conclusion as to whether the Lakecrest Park property should be assessed on its own is not evidence that it did not consider the existing use of the property or the present economic income of the structures. Indeed, it is clear from the Tax Tribunal's opinion that it considered

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[3] We also reject petitioner's assertion that the Tax Tribunal erroneously stated that petitioner's appraisal "was of a property that did not exist for the tax years at issue." The argument is merely one of semantics, inasmuch as the Tax Tribunal recognized that Shipman had computed a true cash value appraisal of the Lakecrest Park property. The Tax Tribunal's concern was that Shipman used income-capitalization and sales-comparison approaches to make valuation determinations for a nonexistent 302-unit apartment complex. The Tax Tribunal's characterization of the 302-unit apartment complex as property that did not exist for the tax years is accurate when considered in light of the evidence that only a 244-unit apartment complex was located at Lakecrest Park. Because Shipman did not attempt to value the 244-unit apartment complex on its own, and her unitary approach to value was rejected, the Tax Tribunal could reasonably conclude that the appraisal was for nonexistent property.

that a 244-unit apartment complex was situated on the Lakecrest Park property and that a 58-unit apartment building was located on the Lakecrest Shores property when arriving at the highest and best use of the Lakecrest Park property. The pertinent "present economic income" means actual income, but expenses may be considered as an element of net income. *Northwood Apartments v Royal Oak*, 98 Mich App 721, 727; 296 NW2d 639 (1980). While it could be inferred from the record that petitioner chose to maintain and present financial information for the two properties on a consolidated basis, the Tax Tribunal was not bound by petitioner's action or required to accept consolidated information as adequate when evaluating the present economic income of the structures in Lakecrest Park. The Tax Tribunal was clearly dissatisfied with the adequacy of petitioner's income evidence. This dissatisfaction does not amount to an error of law, inasmuch as the weight of evidence is within the Tax Tribunal's discretion. *Great Lakes Div of Nat'l Steel Corp*, 227 Mich App at 404.[4]

Petitioner also argues that the Tax Tribunal erred by relying on a cost approach to determine the true cash value of the Lakecrest Park property, as the income-capitalization approach would be the most appropriate method for evaluating income-producing property such as an apartment complex. Absent evidence of comparable sales, the income-capitalization approach is generally considered the most accurate method for valuing income-producing property such as an apartment complex. *CAF Investment Co v Saginaw Twp*, 410 Mich 428, 476; 302 NW2d 164 (1981) (LEVIN, J., concurring); *Uniroyal, Inc v Allen Park*, 138 Mich App 156, 160-161; 360 NW2d 156 (1984), citing *Northwood Apartments*, 98 Mich App at 725.

But where a traditional cost approach to value is used, "true cash value is derived by adding the estimated land value to an estimate of the current cost of reproducing or replacing improvements and then deducting the loss in value from depreciation in structures, i.e., physical deterioration and functional or economic obsolescence." *Meadowlanes Ltd Dividend Housing Ass'n*, 437 Mich at 484 n 18. In reality, this approach is a type of comparative or market data approach. *Great Lakes Div of Nat'l Steel Corp*, 227 Mich App at 402. If buyers and sellers would not consider the cost to build as an alternative to buying an existing facility, estimates of value derived thereon have little bearing on the market price. *Id.* at 403. But where there is inadequate market data or obsolescence, the Tax Tribunal may posit a hypothetical buyer to apply the cost approach, even if an actual buyer does not exists that would look at the cost of building a new facility to determine the usual selling price. *Id.*

Although this case does not involve inadequate market data or obsolescence, the Tax Tribunal found petitioner's particular evidence too unreliable to apply either the sales-

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[4] Whether Shipman's appraisal was credible is of no moment, as this Court does not assess witness credibility in a Tax Tribunal proceeding. *Great Lakes Div of Nat'l Steel Corp*, 227 Mich App at 407. Giving due deference to the Tax Tribunal's assessment of Shipman's credibility and the unreliability of her conclusions, petitioner has not shown that the Tax Tribunal committed an error of law or adopted a wrong principle in finding that Shipman's appraisal lacked credibility or was based on unreliable conclusions.

comparison or income-capitalization approach. The Tax Tribunal used the cost approach to value, as evidenced by respondent's property tax records, only as a last resort, although it is also apparent that the Tax Tribunal used some comparable sales information in petitioner's appraisal as a measure of the accuracy of the cost approach. After questioning the adjustments for "economics characteristics" made by Shipman to the four sold properties used in her sales-comparison approach to arrive at a value for a 302-unit apartment complex, the Tax Tribunal found that the values placed on the property by respondent would have values almost identical to values placed on the property by petitioner. While not conclusive evidence, a sales price of similar properties is nonetheless relevant evidence, which should not simply be rejected out of hand by the Tax Tribunal. *Samonek v Norvell Twp,* 208 Mich App 80, 85; 527 NW2d 24 (1994); *Jones & Laughlin Steel Corp,* 193 Mich App at 354. The Tax Tribunal's goal is to apply its expertise to determine the usual selling price of property, using the most accurate valuation under the circumstances. *Great Lakes Div of Nat'l Steel Corp,* 227 Mich App at 389, 405

Given the Tax Tribunal's determination that it did not have sufficient reliable evidence to apply either the income-capitalization or the sales-comparison approach, we conclude that it did not commit an error of law or adopt a wrong principle by looking to the cost approach, and using some comparable sales information to evaluate the accuracy of the cost approach, to determine the value of the Lakecrest Park property. Further, we disagree with petitioner's claim that the Tax Tribunal considered unadjusted sale prices when commenting on the comparability of the sales information to respondent's cost approach.

While it is clear that the Tax Tribunal found petitioner's overall approach to be flawed because Shipman used a 302-unit, and not a 244-unit, apartment complex to apply the sales-comparison approach,[5] examined in context, it is apparent that the Tax Tribunal was merely expressing its agreement with respondent's claim in its posthearing brief that the comparable sales would be in line with values in the actual assessments if questionable downward adjustments are ignored. The only specific questionable adjustment addressed by the Tax Tribunal was the "economic characteristic" adjustment. With this adjustment removed, there is evidence to support the Tax Tribunal's remarks. Specifically, we note that when the 30-percent adjustment is removed from the 302-unit apartment complex used as Shipman's second comparable sale for tax year 2007, the final adjusted price of the final adjusted price per unit of $18,107 increases by approximately $9,054 ("adjusted price" of $30,179 x .30). The indicated final adjusted price per unit would be $27,161. This is not much different from the true cash value of $6,711,200, or $27,504 per unit, proposed by respondent for tax year 2007. Therefore, petitioner has not established any error.

[5] We note that the Tax Tribunal also deemed the sales-comparison approach flawed as it related to the unitary approach proposed by Shipman for combining the 58-unit apartment building in Lakecrest Shores and the 244-unit apartment complex in Lakecrest Park, because Shipman did not find any sales of apartment complexes existing on noncontiguous properties to support the unitary approach.

We reject petitioner's further claim that Shipman made an appropriate adjustment for "economic characteristics" when preparing the sales-comparison approach on the ground that the credibility and reliability of Shipman's proposed adjustment was a matter for the Tax Tribunal to decide. *Great Lakes Div of Nat'l Steel Corp,* 227 Mich App at 407.

In addition, while there is merit to petitioner's argument that respondent did not introduce the so-called "property tax card" for tax year 2006 at the evidentiary hearing, there was evidence that the missing "property tax card" was a computer-generated document prepared by the Muskegon County Equalization Department in the ordinary course of preparing tax assessments. Elden Nedeau, a senior appraiser in the department, explained at the evidentiary hearing that the county performs the assessment function for respondent. Although Nedeau did not prepare the assessment for petitioner's property, he found sufficient information in the records introduced at the hearing to explain how the true cash value was computed for each tax year. While Nedeau could not explain certain changes recorded in the property tax records, such as an increase in the footage for asphalt paving for tax year 2007, the Tax Tribunal recognized this deficiency in its opinion. At the same time, giving effect to petitioner's burden of proof, the Tax Tribunal recognized that petitioner essentially provided no evidence for it to determine that respondent's cost valuation was too high. Aside from petitioner's failure to present a cost approach for valuation, the Tax Tribunal found that petitioner provided no evidence contending that the factors used by respondent were not accurate.

In conclusion, because the Tax Tribunal's opinion indicates that it considered evidence affecting the weight and reliability of respondent's valuation evidence, while at the same time giving effect to petitioner's burden of proof, petitioner has not demonstrated any error or law or shown that the Tax Tribunal applied a wrong principle in arriving at its determination of the true cash value for the 244-unit Lakecrest Park property. Contrary to what petitioner asserts on appeal, the Tax Tribunal did not simply adopt respondent's proposed valuation. As indicated previously, it was only after the Tax Tribunal found petitioner's evidence too unreliable for it to apply the income-capitalization approach or the sales-comparison approach, and after the tribunal evaluated the accuracy of respondent's proposed cost approach, that it accepted the true cash value contained in the property tax records. This is a common and acceptable practice of the Tax Tribunal. See, e.g., *Sage Terrace Apartments, LLC v Charter Twp of* Kalamazoo (MTT Docket No. 310526, August 30, 2006) and *Univ Village Apartments* v *Kalamazoo* (MTT Docket No. 310529, February 12, 2007). Under the circumstances, the Tax Tribunal satisfied its duty to make an independent determination of true cash value. *Great Lakes Div of Nat'l Steel Corp,* 227 Mich App at 409-410. Its decision is supported by competent, material, and substantial evidence on the whole record.[6]

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[6] We also reject petitioner's argument that the Tax Tribunal intended to apply the proposed true cash value for tax year 2007 to tax year 2006. Although the Tax Tribunal stated in its opinion that the true cash value for each year would be $6,711,200, it is apparent that this was a clerical error. The record is clear that respondent proposed a true cash value of $6,842,400 for tax year 2006, and that a formula of 50 percent of true cash value should be used to determine the state

Affirmed.

/s/ William B. Murphy
/s/ William C. Whitbeck
/s/ Christopher M. Murray

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equalized value. The state equalization value of $3,421,200 determined by the Tax Tribunal accurately represents its decision to adopt respondent's proposed cost valuation for tax year 2006. In any event, the true cash value was not determinative of the tax assessment pursuant to MCL 211.27a, and petitioner has not presented any argument that calls into question the taxable value of $2,918,047 determined by the Tax Tribunal for tax year 2006. Under these circumstances, the Tax Tribunal's misstatement of the true cash value for tax year 2006 is harmless error. See TTR 205.1111(4) (AC, R 205.1111(4)); MCR 2.613(A); *Kern v Pontiac Twp*, 93 Mich App 612, 623; 287 NW2d 603 (1979).